

## § 314.60

## 21 CFR Ch. I (4–1–12 Edition)

(i) The drug product does not represent a meaningful therapeutic benefit over existing treatments for pediatric patients and is not likely to be used in a substantial number of pediatric patients;

(ii) Necessary studies are impossible or highly impractical because, e.g., the number of such patients is so small or geographically dispersed; or

(iii) There is evidence strongly suggesting that the drug product would be ineffective or unsafe in all pediatric age groups.

(3) *Partial waiver.* An applicant may request a waiver of the requirements of paragraph (a) of this section with respect to a specified pediatric age group, if the applicant certifies that:

(i) The drug product does not represent a meaningful therapeutic benefit over existing treatments for pediatric patients in that age group, and is not likely to be used in a substantial number of patients in that age group;

(ii) Necessary studies are impossible or highly impractical because, e.g., the number of patients in that age group is so small or geographically dispersed;

(iii) There is evidence strongly suggesting that the drug product would be ineffective or unsafe in that age group; or

(iv) The applicant can demonstrate that reasonable attempts to produce a pediatric formulation necessary for that age group have failed.

(4) *FDA action on waiver.* FDA shall grant a full or partial waiver, as appropriate, if the agency finds that there is a reasonable basis on which to conclude that one or more of the grounds for waiver specified in paragraphs (c)(2) or (c)(3) of this section have been met. If a waiver is granted on the ground that it is not possible to develop a pediatric formulation, the waiver will cover only those pediatric age groups requiring that formulation. If a waiver is granted because there is evidence that the product would be ineffective or unsafe in pediatric populations, this information will be included in the product's labeling.

(5) *Definition of "meaningful therapeutic benefit".* For purposes of this section and § 201.23 of this chapter, a drug will be considered to offer a meaningful

therapeutic benefit over existing therapies if FDA estimates that:

(i) If approved, the drug would represent a significant improvement in the treatment, diagnosis, or prevention of a disease, compared to marketed products adequately labeled for that use in the relevant pediatric population. Examples of how improvement might be demonstrated include, for example, evidence of increased effectiveness in treatment, prevention, or diagnosis of disease, elimination or substantial reduction of a treatment-limiting drug reaction, documented enhancement of compliance, or evidence of safety and effectiveness in a new subpopulation; or

(ii) The drug is in a class of drugs or for an indication for which there is a need for additional therapeutic options.

(d) *Exemption for orphan drugs.* This section does not apply to any drug for an indication or indications for which orphan designation has been granted under part 316, subpart C, of this chapter.

[63 FR 66670, Dec. 2, 1998]

### **§ 314.60 Amendments to an unapproved application, supplement, or resubmission.**

(a) FDA generally assumes that when an original application, supplement to an approved application, or resubmission of an application or supplement is submitted to the agency for review, the applicant believes that the agency can approve the application, supplement, or resubmission as submitted. However, the applicant may submit an amendment to an application that has been filed under § 314.101 but is not yet approved.

(b)(1) Submission of a major amendment to an original application, efficacy supplement, or resubmission of an application or efficacy supplement within 3 months of the end of the initial review cycle constitutes an agreement by the applicant under section 505(c) of the act to extend the initial review cycle by 3 months. (For references to a resubmission of an application or efficacy supplement in paragraph (b) of this section, the timeframe for reviewing the resubmission is the "review cycle" rather than the "initial

review cycle.”) FDA may instead defer review of the amendment until the subsequent review cycle. If the agency extends the initial review cycle for an original application, efficacy supplement, or resubmission under this paragraph, the division responsible for reviewing the application, supplement, or resubmission will notify the applicant of the extension. The initial review cycle for an original application, efficacy supplement, or resubmission of an application or efficacy supplement may be extended only once due to submission of a major amendment. FDA may, at its discretion, review any subsequent major amendment during the initial review cycle (as extended) or defer review until the subsequent review cycle.

(2) Submission of a major amendment to an original application, efficacy supplement, or resubmission of an application or efficacy supplement more than 3 months before the end of the initial review cycle will not extend the cycle. FDA may, at its discretion, review such an amendment during the initial review cycle or defer review until the subsequent review cycle.

(3) Submission of an amendment to an original application, efficacy supplement, or resubmission of an application or efficacy supplement that is not a major amendment will not extend the initial review cycle. FDA may, at its discretion, review such an amendment during the initial review cycle or defer review until the subsequent review cycle.

(4) Submission of a major amendment to a manufacturing supplement within 2 months of the end of the initial review cycle constitutes an agreement by the applicant under section 505(c) of the act to extend the initial review cycle by 2 months. FDA may instead defer review of the amendment until the subsequent review cycle. If the agency extends the initial review cycle for a manufacturing supplement under this paragraph, the division responsible for reviewing the supplement will notify the applicant of the extension. The initial review cycle for a manufacturing supplement may be extended only once due to submission of a major amendment. FDA may, at its discretion, review any subsequent

major amendment during the initial review cycle (as extended) or defer review until the subsequent review cycle.

(5) Submission of an amendment to a supplement other than an efficacy or manufacturing supplement will not extend the initial review cycle. FDA may, at its discretion, review such an amendment during the initial review cycle or defer review until the subsequent review cycle.

(6) A major amendment may not include data to support an indication or claim that was not included in the original application, supplement, or resubmission, but it may include data to support a minor modification of an indication or claim that was included in the original application, supplement, or resubmission.

(7) When FDA defers review of an amendment until the subsequent review cycle, the agency will notify the applicant of the deferral in the complete response letter sent to the applicant under §314.110 of this part.

(c)(1) An unapproved application may not be amended if all of the following conditions apply:

(i) The unapproved application is for a drug for which a previous application has been approved and granted a period of exclusivity in accordance with section 505(c)(3)(D)(ii) of the act that has not expired;

(ii) The applicant seeks to amend the unapproved application to include a published report of an investigation that was conducted or sponsored by the applicant entitled to exclusivity for the drug;

(iii) The applicant has not obtained a right of reference to the investigation described in paragraph (c)(1)(ii) of this section; and

(iv) The report of the investigation described in paragraph (c)(1)(ii) of this section would be essential to the approval of the unapproved application.

(2) The submission of an amendment described in paragraph (c)(1) of this section will cause the unapproved application to be deemed to be withdrawn by the applicant under §314.65 on the date of receipt by FDA of the amendment. The amendment will be considered a resubmission of the application, which may not be accepted except as

## § 314.65

provided in accordance with section 505(c)(3)(D)(ii) of the act.

(d) The applicant shall submit a field copy of each amendment to § 314.50(d)(1). The applicant shall include in its submission of each such amendment to FDA a statement certifying that a field copy of the amendment has been sent to the applicant's home FDA district office.

[50 FR 7493, Feb. 22, 1985, as amended at 57 FR 17983, Apr. 28, 1992; 58 FR 47352, Sept. 8, 1993; 63 FR 5252, Feb. 2, 1998; 69 FR 18764, Apr. 8, 2004; 73 FR 39608, July 10, 2008]

### § 314.65 Withdrawal by the applicant of an unapproved application.

An applicant may at any time withdraw an application that is not yet approved by notifying the Food and Drug Administration in writing. If, by the time it receives such notice, the agency has identified any deficiencies in the application, we will list such deficiencies in the letter we send the applicant acknowledging the withdrawal. A decision to withdraw the application is without prejudice to refiling. The agency will retain the application and will provide a copy to the applicant on request under the fee schedule in § 20.45 of FDA's public information regulations.

[50 FR 7493, Feb. 22, 1985, as amended at 68 FR 25287, May 12, 2003; 73 FR 39609, July 10, 2008]

### § 314.70 Supplements and other changes to an approved application.

(a) *Changes to an approved application.*

(1)(i) Except as provided in paragraph (a)(1)(ii) of this section, the applicant must notify FDA about each change in each condition established in an approved application beyond the variations already provided for in the application. The notice is required to describe the change fully. Depending on the type of change, the applicant must notify FDA about the change in a supplement under paragraph (b) or (c) of this section or by inclusion of the information in the annual report to the application under paragraph (d) of this section.

(ii) The submission and grant of a written request for an exception or alternative under § 201.26 of this chapter satisfies the applicable requirements in paragraphs (a) through (c) of this sec-

## 21 CFR Ch. I (4–1–12 Edition)

tion. However, any grant of a request for an exception or alternative under § 201.26 of this chapter must be reported as part of the annual report to the application under paragraph (d) of this section.

(2) The holder of an approved application under section 505 of the act must assess the effects of the change before distributing a drug product made with a manufacturing change.

(3) Notwithstanding the requirements of paragraphs (b) and (c) of this section, an applicant must make a change provided for in those paragraphs in accordance with a regulation or guidance that provides for a less burdensome notification of the change (for example, by submission of a supplement that does not require approval prior to distribution of the product or in an annual report).

(4) The applicant must promptly revise all promotional labeling and advertising to make it consistent with any labeling change implemented in accordance with paragraphs (b) and (c) of this section.

(5) Except for a supplement providing for a change in the labeling, the applicant must include in each supplement and amendment to a supplement providing for a change under paragraph (b) or (c) of this section a statement certifying that a field copy has been provided in accordance with § 314.440(a)(4).

(6) A supplement or annual report must include a list of all changes contained in the supplement or annual report. For supplements, this list must be provided in the cover letter.

(b) *Changes requiring supplement submission and approval prior to distribution of the product made using the change (major changes).* (1) A supplement must be submitted for any change in the drug substance, drug product, production process, quality controls, equipment, or facilities that has a substantial potential to have an adverse effect on the identity, strength, quality, purity, or potency of the drug product as these factors may relate to the safety or effectiveness of the drug product.

(2) These changes include, but are not limited to:

(i) Except those described in paragraphs (c) and (d) of this section,